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BRAND-COLOUR ASSOCIATIONS: A COMPARISON OF SURVEY METHODS

**A thesis presented in partial fulfilment of the requirements for
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ABSTRACT

Registration of colour as a trademark in *Qualitex v Jacobsen* 1995 paved the way for other companies to register colours they believe have a distinctive association with their brand. Consumer survey evidence is often used to demonstrate distinctiveness, but frequently receives little weight due to criticisms of the methodology. In particular, the questions used and their ability to provide insights into the legal question of interest are heavily criticised. In terms of colour trademark applications, multiple methods have been employed to provide evidence of colour brand associations, however, to date there are no standard measures.

The overall objective of this study was to test various methods of estimating colour-brand associations with the focus of assessing the similarity in the estimates and developing a robust methodology. This study tested four methods of estimating brand-colour distinctiveness in the chocolate product category, where Cadbury has recently sought to register the colour purple, and the rice category where Effem Foods had unsuccessfully applied to register orange in relation to Uncle Ben's rice. The research in this thesis replicated and extended a study conducted in the chocolate category in 2003. The first method explored associations with brands, while the second used a sequence of increasingly specific questions to explore the same associations. The third method required respondents to match a range of shades with brands and the fourth method employed a choice modelling experiment designed to examine respondents' choice behaviour and the interaction between brands and colours.

Overall, it was found that all methods revealed a strong association between Cadbury and purple, although Cadbury was also associated with other colours. The findings also suggested that orange was not inherently associated with Uncle Ben's. The key implication that arises from these findings is that where a high level of association is detected the methods had strong convergent validity. However, the choice modelling method is recommended as the more robust methodology as it focused on the effect of colour-brand interactions on behaviour rather than cognitive constructs.

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CHAPTER ONE: INTRODUCTION

1.1 Trademarks: A means of protecting distinctiveness

Trademarks are unique product identifiers that may include words, logos, colours, sounds, smells or any combination of these (IPONZ, 1999; Cohen, 1991; Loken, Ross & Hinkle, 1986). They originated as a symbol to help consumers identify a product or service. According to Cohen (1991), the basic theoretical construct of trademark law is to protect consumers from confusion between brands; that is, to prevent consumers from becoming confused about the source or origin of a product or service. Trademarks therefore help producers differentiate their products or services from those of other producers.

Trademarks have evolved to have a considerable influence on the value of a brand, mainly through the associations they possess and the distinctiveness they allow (Taylor & Walsh; 2002 Cohen, 1991). As consumers become familiar with particular marks and the goods or services these represent, marks can acquire secondary meaning as indicators of quality and source.

A successful trademark depends on the distinctiveness that it holds. If a trademark is distinctive, a brand will be easily recognised and identified within a product category (Hoek, Gendall, Brennan, Bednall, & Noble, 2003). Cohen (1986) noted a continuum of trademarks with generic marks at one end and fanciful marks at the other. Generic marks describe a product category therefore are not eligible for registration. Fanciful marks may lose protection if they become generic rather than being associated with a particular brand (cited in Hoek, Gendall, Brennan, Bednall, & Noble, 2003).

The development of trademarks has raised issues about how trademark owners are established, the right to use marks, and the implications of using a trademark whether the user is authorised to use the mark or not. In New Zealand, trademark registration involves providing evidence to demonstrate that the mark is associated with the product or service of the applicant. More recently,

applications have expanded and now include not only the registration of words and symbols but also colours and smells, thus moving into unprecedented areas.

1.2 Current Situation

As the number of trademark applications increase, businesses are taking a more aggressive stance to safeguard their intellectual property (Cohen, 1991; Hoek & Gendall, 2003). The benefits of trademarks for a business are also being realised as successful trademarks arguably build brand equity and goodwill over time (Cohen, 1991; Jacoby & Morrin, 1998). Thus, well-known marks of reputable companies are valuable business assets, worth nurturing and protection. Increased recognition of trademarks' importance, in the past decade, has led to a substantial increase in trademark registration applications and disputes. As a result, the need to provide admissible evidence to support such cases has become important (Cohen, 1991; Howard, Kerin & Gengler, 2000).

Evidence provided to prove that a colour had become inherently associated with a brand often takes the form of survey evidence. Different survey methodologies have previously been presented as evidence in the courts however, there are no generally accepted measures. In addition, criticisms are often levelled at survey evidence based on validity, reliability, and methodological flaws of the survey. Therefore, there is a need for the development of robust survey methodologies.

The registration of colours as trademarks is now allowed in New Zealand. Cadbury have recently put forward an application to register purple as a trademark of Cadbury in New Zealand. To be eligible to register purple, as a trademark, evidence must be provided to prove that purple is inherently associated with Cadbury. In addition to this, Effem Foods have recently been unsuccessful in registering orange as a trademark of Uncle Ben's rice. These cases provide a timely focus for research into, survey evidence, colour trademarks, and the use of survey evidence to support colour trademark applications.

The research outlined and discussed in this thesis replicates and extends Hoek, Gendall, Brennan, Bednall, and Nobel's (2003) research into colour brand associations in the chocolate category, predicting colour brand associations in different product categories and developing a robust survey methodology. Hoek et al. found that where a distinctive association existed any of the methods tested revealed an association. They also concluded that each of the methods tested were likely to receive different weight in court.

Chapter two of this thesis examines current trademark legislation and discusses the issues relating to the entitlement of a trademark with particular attention to colour trademarks. Chapter three examines the use of evidence in trademark cases, with specific attention to the problems with survey evidence; finally, it explores the new and expanding area of colour trademarks. Chapter four outlines and explains the study's methodology whilst chapter five presents the results of the study and relates them back to chapters two, three, and four. Finally, chapter six summarises the key findings and the implications and directions for future research that arise from these.